

AMENDED IN SENATE APRIL 17, 2006

AMENDED IN SENATE MARCH 20, 2006

SENATE BILL

No. 1180

**Introduced by Senator Migden
(Principal coauthor: Senator Figueroa)**

January 17, 2006

~~An act to amend Section 25664 of the Business and Professions Code, relating to alcoholic beverages. An act to add Section 11757 to the Health and Safety Code, relating to alcoholic beverages.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1180, as amended, Migden. ~~Alcoholic beverages.~~ *Health and Human Services: alcohol use prevention: minors.*

Existing law establishes the California Health and Human Services Agency, which includes the State Department of Alcohol and Drug Programs. The department provides, among other things, alcohol prevention and treatment programs, including programs related to the inappropriate use of alcoholic beverages.

This bill would require the Secretary of the California Health and Human Services Agency, on or before January 1, 2008, in cooperation with the State Department of Alcoholic Beverage Control and in consultation with the State Department of Alcohol and Drug Programs and various other entities, to issue a report to the Legislature identifying and summarizing the most recent research, data, and other relevant information regarding alcoholic beverage use by underage youth, as described. This bill would require the report to include recommendations for additional action to prevent alcoholic beverage use by underage youth, including legislative changes and suggestions for new or modified programs that would aid

in the reduction of alcoholic beverage use by youth in California, as provided.

~~The Alcoholic Beverage Control Act contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon, alcoholic beverage licenses by the Department of Alcoholic Beverage Control. That act also prohibits, subject to a criminal penalty, the use of alcoholic beverages in any advertisement that encourages minors to drink the alcoholic beverages.~~

~~This bill would instead prohibit any person, firm, corporation, partnership, or other organization from advertising or marketing alcoholic beverages in a manner that targets minors and encourages the consumption or purchase of alcoholic beverages by minors, as provided. This bill would also provide that a person, firm, corporation, partnership, or other organization would not violate this prohibition if it places an alcohol advertisement in media that it reasonably believes has a youth audience of 15 percent or less based on standard industry data available at the time of the placement.~~

~~By changing the definition of a crime, this bill imposes a state-mandated local program.~~

~~This bill makes findings and declarations regarding the public health impact of underage drinking, the impact alcoholic beverage advertising has on young people, and the standards regarding alcoholic beverage advertising set forth in the bill.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~ no.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Problems associated with alcohol consumption by those
- 4 under the minimum drinking age of 21 years constitute a public
- 5 health and safety emergency in California and the nation. The

1 prevention of underage alcohol consumption is therefore an
2 urgent priority for the people of California.

3 (b) The earlier a young person begins to consume alcoholic
4 beverages, the more likely it is that he or she will experience
5 alcohol problems throughout his or her life. Research has shown
6 that, compared with persons who wait until 21 years of age or
7 older to begin drinking, those who start to drink before 15 years
8 of age are at far greater risk of alcohol problems later in life,
9 including alcohol-related motor vehicle crashes, assault, and
10 other types of injuries. Recent increases in alcohol consumption
11 and binge drinking among underage girls, including girls under
12 the age of 15 years, emphasize the need for new initiatives to
13 prevent youth alcohol problems.

14 (c) The sale, transfer, or furnishing of alcoholic beverages to
15 minors and the public possession of alcohol by minors is illegal
16 in California. Enforcement of laws designed to prevent access
17 and consumption of alcoholic beverages by minors is an urgent
18 priority for the state.

19 (d) California and its governmental subdivisions have initiated
20 numerous programs and public awareness campaigns to prevent
21 alcohol problems in minors and to alert citizens to the dangers
22 associated with underage drinking. These efforts, which are
23 augmented by programs conducted by nongovernmental
24 organizations and individuals, are not sufficiently addressing the
25 public health emergency associated with underage drinking.

26 (e) Research has established that exposure to alcohol
27 advertising influences young people's beliefs and intentions
28 regarding alcoholic beverages and that increased exposure to
29 alcohol advertising results in increased underage alcohol
30 consumption.

31 (f) Research has also established that some alcohol
32 advertisements have images, themes, slogans, and other content
33 that are highly attractive to young people and encourage them to
34 consume alcoholic beverages.

35 (g) Alcoholic beverage products, that research shows are
36 highly attractive to young people, including girls under the age of
37 15 years, are advertised and sold in California. These products,
38 sometimes referred to as flavored alcoholic beverages or
39 "alcopops," have added flavorings and sweeteners. "Alcopops"
40 have a relatively low alcohol content that makes them similar in

1 taste to fruit drinks, sodas, and other nonalcoholic beverages
2 popular with young people. Advertising for these products
3 constitutes a threat to the health and safety of minors.

4 (h) Current laws and voluntary restrictions on alcohol
5 advertising have failed to reduce exposure of alcohol advertising
6 to young people. Research shows that in many cases minors are
7 exposed to advertisements for particular alcohol products to a
8 much larger extent than adults, including young adults, when
9 measured on a per capita basis. This is true for many “alcopops,”
10 whose sweet taste and similarity to nonalcoholic beverages have
11 been found to be highly attractive to young people.

12 (i) Because alcoholic beverages are a legal product for adults,
13 restrictions on youth exposure to alcohol advertising must
14 provide advertisers with clear guidance as to what is prohibited,
15 must not impose strict liability on advertisers, and must be
16 narrowly tailored to ~~insure~~ *ensure* the means to reach potential
17 customers of legal drinking age.

18 ~~(j) The California Court of Appeal, in People ex rel. v. R.J.~~
19 ~~Reynolds Tobacco Co. (2004) 116 Cal.App.4th 1253, discussed a~~
20 ~~restriction on tobacco advertising that prohibited targeting youth,~~
21 ~~which now provides clear guidance for an intent standard with~~
22 ~~regard to alcohol advertisers who target underage drinkers. The~~
23 ~~intent standard used by the court did not impose strict liability.~~
24 ~~Instead, the court applied the concept of intent that “denotes not~~
25 ~~only those results that the actor desires, but also those~~
26 ~~consequences which he knows are substantially certain to result~~
27 ~~from his conduct.” Thus, the court concluded the tobacco~~
28 ~~advertiser, based on the advertising campaign the company~~
29 ~~adopted and its failure to measure advertising exposure to young~~
30 ~~people or compare youth exposure to that of young adults,~~
31 ~~intentionally targeted youth because the advertiser “knew to a~~
32 ~~substantial certainty that its advertising was exposed to youth to~~
33 ~~the same extent it was exposed to young adults.” The Legislature~~
34 ~~hereby adopts the court’s approach to advertising that~~
35 ~~intentionally targets youth for the purposes of this legislation.~~

36 ~~(k) Underage drinkers between 12 and 20 years of age~~
37 ~~constitute approximately 15 percent of the 12 years of age and~~
38 ~~older population of California. The Legislature declares that an~~
39 ~~advertiser does not violate this legislation if the advertiser places~~
40 ~~an alcohol advertisement in media that the advertiser reasonably~~

1 ~~believes has a youth audience of 15 percent or less based on~~
2 ~~standard industry data available at the time of the placement. The~~
3 ~~California Court of Appeal has recognized the reliability and~~
4 ~~ready availability of data for making such a determination.~~

5 ~~(l) Research shows that alcohol advertisers can reach their~~
6 ~~intended adult audience, including young adults, while adhering~~
7 ~~to a 15-percent youth audience standard without additional costs.~~
8 ~~The data necessary for determining youth audience composition~~
9 ~~is readily available to alcohol advertisers and is used by them on~~
10 ~~a routine basis.~~

11 ~~(m) The 15-percent youth audience standard is narrowly~~
12 ~~tailored to address the specific problem of undue youth exposure~~
13 ~~to alcohol advertising while insuring that alcohol advertisers~~
14 ~~have ready access to adult audiences.~~

15 ~~(n) A finding of youth targeting pursuant to this legislation~~
16 ~~may be based on evidence of advertising placement, product~~
17 ~~design, and other factors relevant to the exposure to young~~
18 ~~people to the advertisement and the attractiveness of the~~
19 ~~advertisement and the product to being advertised to young~~
20 ~~people.~~

21 *SEC. 2. Section 11757 is added to the Health and Safety*
22 *Code, to read:*

23 *11757. (a) (1) On or before January 1, 2008, the Secretary,*
24 *in cooperation with the State Department of Alcoholic Beverage*
25 *Control, shall issue to the Legislature a report identifying and*
26 *summarizing the most recent research, data, and other relevant*
27 *information regarding alcoholic beverage use by underage*
28 *youth, including, but not limited to, use of flavored malt*
29 *beverages by underage youth.*

30 *(2) The Secretary shall consult with the department, the State*
31 *Department of Health Services, the Office of the Attorney*
32 *General, and the Senate Office of Research in developing the*
33 *report.*

34 *(b) (1) The report shall:*

35 *(A) Describe the onset, prevalence, frequency, and intensity of*
36 *alcoholic beverage use by underage youth, including any*
37 *difference in use by gender, age, race, ethnicity, geographic*
38 *location, and type of alcoholic beverage consumed.*

39 *(B) Describe the factors that lead to, and are associated with,*
40 *alcoholic beverage use by underage youth.*

1 (C) Describe the impact of exposure to various forms of
2 alcoholic beverage advertising on youth, including the impact of
3 advertising placement and content, product placement, Internet
4 advertising, and marketing at colleges and universities.

5 (D) Identify federal statutes, programs, and efforts related to
6 the reduction of alcoholic beverage use by underage youth.

7 (E) Identify statutes, programs, and efforts in California
8 related to the reduction of alcoholic beverage use by underage
9 youth, including compliance check programs in retail outlets,
10 enforcement programs to deter adults from purchasing alcoholic
11 beverages for underage youth, and school alcohol prevention
12 programs.

13 (F) Identify efforts and best practice models in other states to
14 reduce alcoholic beverage use by underage youth.

15 (G) Describe the compliance with, and effectiveness of,
16 alcoholic beverage industry codes for self-regulation and
17 alcoholic beverage advertising.

18 (H) Describe any harmful health, social, and other
19 consequences of alcoholic beverage use by underage youth,
20 including any difference in consequences by gender, age, race,
21 ethnicity, and geographic location.

22 (I) Recommend additional actions to prevent alcoholic
23 beverage use by underage youth, including legislative changes
24 and suggestions for new or modified programs that would aid in
25 the reduction of alcoholic beverage use by youth in California.

26 (J) Identify and describe any other relevant information
27 regarding alcoholic beverage use by underage youth as
28 determined by the Secretary and the State Department of
29 Alcoholic Beverage Control.

30 (2) The report shall focus on alcoholic beverage use by
31 underage youth in California to the extent relevant information is
32 available and shall include national information where
33 California specific information is not available.

34 ~~SEC. 2. Section 25664 of the Business and Professions Code~~
35 ~~is amended to read:~~

36 ~~25664. (a) (1) No person, firm, corporation, partnership, or~~
37 ~~other organization shall advertise or market an alcoholic~~
38 ~~beverage in a manner that targets minors and encourages the~~
39 ~~consumption or purchase of alcoholic beverages by minors.~~

1 ~~(2) Factors in determining whether the advertising or~~
2 ~~marketing of an alcoholic beverage targets minors and~~
3 ~~encourages the consumption or purchase of alcoholic beverages~~
4 ~~include, but are not limited to:~~

5 ~~(A) Advertisement placement.~~

6 ~~(B) Product design.~~

7 ~~(C) Information regarding exposure of the advertisement to a~~
8 ~~youth audience.~~

9 ~~(D) Information regarding the attractiveness of the~~
10 ~~advertisement to a youth audience.~~

11 ~~(E) Information regarding the attractiveness of the alcoholic~~
12 ~~beverage to underage drinkers.~~

13 ~~(F) Language, slogans, or other content that appeals to a youth~~
14 ~~audience used in the advertising or marketing of the alcoholic~~
15 ~~beverage.~~

16 ~~(3) A person, firm, corporation, partnership, or other~~
17 ~~organization is not a violation of this subdivision if it places an~~
18 ~~alcohol advertisement in media that the person, firm, corporation,~~
19 ~~partnership, or other organization reasonably believes has a youth~~
20 ~~audience of 15 percent or less based on standard industry data~~
21 ~~available at the time of the placement.~~

22 ~~(b) Signage or flyers advertising an establishment that serves~~
23 ~~alcoholic beverages to individuals under the age of 21 years are~~
24 ~~prohibited under subdivision (a) if one of the establishment's~~
25 ~~principal business activities is the selling of alcoholic beverages,~~
26 ~~and the advertisement expressly states that the jurisdiction in~~
27 ~~which the establishment is located has a legal drinking age of~~
28 ~~under 21 years or that individuals under the age of 21 years may~~
29 ~~patronize the establishment.~~

30 ~~(c) Nothing in this section shall be deemed to restrict or~~
31 ~~prohibit any advertisement of alcoholic beverages to those~~
32 ~~persons of legal drinking age.~~

33 ~~(d) The department may adopt rules as it determines to be~~
34 ~~necessary for the administration of this section.~~

35 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
36 ~~Section 6 of Article XIII B of the California Constitution because~~
37 ~~the only costs that may be incurred by a local agency or school~~
38 ~~district will be incurred because this act creates a new crime or~~
39 ~~infraction, eliminates a crime or infraction, or changes the~~
40 ~~penalty for a crime or infraction, within the meaning of Section~~

1 ~~17556 of the Government Code, or changes the definition of a~~
2 ~~crime within the meaning of Section 6 of Article XIII B of the~~
3 ~~California Constitution.~~

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